

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

February 2018 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUBEN FILIAN,

Defendant.

No. 18 CR 00374

I N D I C T M E N T

[18 U.S.C. § 1349: Conspiracy to Commit Health Care Fraud; 18 U.S.C. § 1347: Health Care Fraud; 18 U.S.C. § 371: Conspiracy to Solicit, Receive, and Pay Illegal Remuneration for Health Care Referrals; 42 U.S.C. § 1320a-7b(b)(1)(A): Illegal Remuneration for Health Care Referrals; 18 U.S.C. § 1956(a)(1)(B)(i): Money Laundering; 18 U.S.C. § 2: Aiding and Abetting and Causing an Act to be Done; 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 982(a)(7), 28 U.S.C. § 2461(c): Criminal Forfeiture]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. §§ 1349, 2]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

1 1. Defendant RUBEN FILIAN ("FILIAN") was a resident of
2 Glendale, California, within the Central District of California.
3 Defendant FILIAN was a physician assistant ("PA") licensed to
4 practice in California.

5 2. Defendant FILIAN maintained at least five bank
6 accounts in his name. Defendant FILIAN was the sole signatory
7 on accounts in his name at U.S. Bank, including one account
8 ending in 1394 ("FILIAN USB x1394"), which was opened on or
9 about December 9, 2011, and one account ending in 8448 ("FILIAN
10 USB x8448"), which was opened on or about December 17, 2013.
11 Defendant FILIAN was the sole signatory on two accounts at Bank
12 of America in his name, including one account ending in 9440
13 ("FILIAN BOA x9440"), which was opened on or about April 9,
14 2015, and one account ending in 4580 ("FILIAN BOA x4580"), which
15 was opened on or about July 5, 2015. Defendant FILIAN was the
16 sole signatory on one account at JPMorgan Chase Bank in his
17 name, an account ending in 0368 ("FILIAN JPM x0368"), which was
18 opened on or about March 1, 2017.

19 3. Defendant FILIAN registered Volkadon Capital, LLC
20 ("Volkadon") with the California Secretary of State in or about
21 January 2011, and listed himself as the incorporator and the
22 agent for service of process. In or about November 2017, L.F.
23 filed a Statement of Information with the California Secretary
24 of State, and listed L.F. as the Chief Executive Officer and
25 registered agent for service of process. Volkadon had two Wells
26 Fargo Accounts, one account ending in 0910 ("Volkadon WF x0910")
27 and another account ending in 9620 ("Volkadon WF x9620"), both
28 of which were opened on or about June 20, 2011, and listed

1 defendant FILIAN as the sole signatory. In or about August
2 2013, L.F. was added as a signatory to the accounts, and the
3 purpose of the business was listed as "Real Estate Investment."

4 4. Defendant FILIAN registered Quadratum, Inc.
5 ("Quadratum") with the California Secretary of State in or about
6 June 2012, and listed himself as the sole incorporator.
7 Quadratum had the following bank accounts: one Bank of America
8 account ending in 2076 ("Quadratum BOA x2076"), opened on or
9 about April 4, 2013, on which defendant FILIAN is listed as the
10 President of Quadratum; and U.S. Bank account ending in 8244
11 ("Quadratum USB x8244"), opened on or about July 17, 2012, on
12 which the purpose of the business is listed as "Real Estate
13 Investment." Defendant FILIAN is the sole signatory on both
14 Quadratum BOA x2076 and Quadratum USB x8244.

15 5. Defendant FILIAN registered Karabell, Inc.
16 ("Karabell") with the California Secretary of State in or about
17 May 2017, and listed himself as the incorporator and the agent
18 for service of process. In or about February 2018, defendant
19 FILIAN filed a Statement of Information with the Secretary of
20 State, and listed himself as the Chief Executive Officer,
21 Secretary, and Chief Financial Officer of Karabell. Karabell
22 had a bank account at JPMorgan Chase, account ending 3019
23 ("Karabell JPM x3019"), opened on or about June 13, 2017, on
24 which defendant FILIAN was the sole signatory and was listed as
25 Karabell's President.

26 6. Co-conspirator Stephen Levine, M.D. ("Levine"),
27 employed defendant FILIAN between in or about August 2013 and
28 December 2017 as an independent contractor to conduct physical

1 exams and face-to-face evaluations of individuals enrolled in
2 Medicare at their homes to assess the individuals for home
3 health care services.

4 The Medicare Program

5 7. Medicare was a federally-funded health insurance
6 program that provided funds for health care services provided to
7 individuals aged 65 or above, and to certain disabled persons.
8 The U.S. Department of Health and Human Services, Centers for
9 Medicare and Medicaid Services ("CMS") administered the Medicare
10 program, which was a "health care benefit program" as defined by
11 Title 18, United States Code, Section 24(b).

12 8. The individuals who were enrolled in the Medicare
13 program were referred to as "beneficiaries." Medicare
14 beneficiaries were issued beneficiary identification cards that
15 certified eligibility for Medicare and identified each
16 beneficiary by a unique health identification card number ("HIC
17 number").

18 9. Home health agencies ("HHAs"), physicians, PAs, and
19 other health care providers that provide medical services that
20 were to be reimbursed by Medicare were referred to as Medicare
21 "providers." To participate in the Medicare program, providers
22 were required to submit an application in which the provider
23 agreed to comply with all Medicare-related laws and regulations,
24 including the anti-kickback statute (42 U.S.C. § 1320a-7b(b)),
25 which proscribed the offering, payment, solicitation, or receipt
26 of any remuneration in exchange for a patient referral or
27 referral of other business for which payment may be made by any
28 federal health care program. If Medicare approved the

1 provider's application, Medicare assigned the provider a
2 Medicare "provider number" which was used for submitting,
3 processing, and paying claims.

4 10. Home health care was supportive health care that was
5 provided to patients in their homes. Home health care was
6 prescribed by a treating physician to a patient if the patient
7 had developed an illness or injury that required skilled care
8 but not at the level provided by an acute facility such as a
9 hospital or at a residential skilled nursing facility. Home
10 health services might include changing wound dressings, giving
11 injections, or teaching a patient's family member to properly
12 care for a patient recently discharged from the hospital.

13 11. To have qualified for the Medicare home health
14 benefit, a beneficiary must have been confined to his or her
15 home, been under the care of a physician, received services
16 under a CMS Form 485 Home Health Certification and Plan of Care
17 ("485" or "POC"), established and periodically reviewed by a
18 physician and have been in need of skilled nursing care on an
19 intermittent basis, or physical therapy, or speech-language
20 pathology, or have had a continuing need for occupational
21 therapy.

22 12. A patient was considered to be confined to his or her
23 home ("homebound") if the patient was generally unable to leave
24 home, such that leaving home required a considerable and taxing
25 effort. In addition, the patient must either, because of
26 illness or injury, have needed the aid of supportive devices
27 such as a cane, walker, wheelchair, or the use of special
28 transportation, or required the assistance of another person in

1 order to leave his or her residence, or had a condition such
2 that leaving his or her home was medically contraindicated.

3 13. Prior to the start of care, a physician, registered
4 nurse, or qualified therapist must have completed an assessment
5 of the patient, using the Outcome and Assessment Information Set
6 ("OASIS") created by CMS. The OASIS was a group of data
7 elements that represented core items of a comprehensive
8 assessment for an adult home care patient. Its purpose was to
9 provide a standardized assessment tool. The information
10 gathered during the assessment was then used to create the 485
11 for that patient. A 485 had to indicate the type of services to
12 be provided to the patient, both with respect to the
13 professional who would provide them and the nature of the
14 individual services, as well as the frequency of the services.

15 14. The skilled nursing services were covered by Medicare
16 if the services were reasonable and necessary for the diagnosis
17 and treatment of the patient's illness or injury and were
18 necessary to maintain the patient's current condition or prevent
19 or slow further deterioration. The services must have required
20 specialized judgment, knowledge or the skills of a registered
21 nurse or licensed practical (vocational) nurse under the
22 supervision of a registered nurse. The services must have been
23 so inherently complex that the service could only be safely and
24 effectively performed by, or under the supervision of, a
25 professional. Examples include intravenous medications,
26 intramuscular injections, insertion of a catheter or respiratory
27 treatments.

1 15. Physical therapy, speech-language pathology, or
2 occupational therapy must be reasonable and necessary to the
3 treatment of the patient's illness or injury or for the
4 restoration or maintenance of function affected by the patient's
5 illness or injury. To be reimbursable by Medicare, the services
6 must have been those that were inherently complex and required a
7 skilled therapist in order to safely and/or effectively perform
8 the service. The services must have required the specialized
9 skill, knowledge, and judgment of a therapist. Services
10 involving activity for the general welfare of any patient, such
11 as general exercises to promote overall fitness or flexibility
12 or activities to provide diversion or general motivation did not
13 constitute skilled therapy.

14 The Claims Process

15 16. HHAs that provided reasonable and necessary services
16 to Medicare beneficiaries could submit claims for reimbursement
17 to the Medicare program. In order for the HHA to initiate home
18 health care services, a physician must have certified that the
19 above Medicare requirements, among others, were met.

20 17. The services that an HHA provided to the patient were
21 based upon the 485, which must have been reviewed and signed by
22 a physician. The 485 must have been reviewed and signed by the
23 physician who established the 485, in consultation with the
24 HHA's professional personnel, at least every 60 days. CMS
25 permitted continuous 60-day episodes of home health care for
26 beneficiaries who continued to be eligible for home health
27 benefits.

1 18. A provider could submit a claim to Medicare through
2 the mail or electronically. Most providers submitted their
3 claims electronically pursuant to an agreement they executed
4 with Medicare in which the providers agreed that they were
5 responsible for all claims submitted to Medicare by themselves,
6 their employees, and their agents; that they would submit claims
7 only on behalf of those Medicare recipients who had given their
8 written authorization to do so; and that they would submit
9 claims that were accurate, complete, and truthful. If the
10 provider submitted by mail, the provider had to agree to the
11 same conditions. Medicare would cover such services only if the
12 services were medically necessary and were actually provided to
13 the Medicare beneficiaries.

14 B. OBJECT OF THE CONSPIRACY

15 19. Beginning in or around August 2013 and continuing
16 through at least in or around December 2017, in Los Angeles and
17 Ventura Counties, within the Central District of California, and
18 elsewhere, defendant FILIAN and others known and unknown to the
19 Grand Jury, knowingly combined, conspired, and agreed to commit
20 health care fraud, in violation of Title 18, United States Code,
21 Section 1347.

22 C. MANNER AND MEANS OF THE CONSPIRACY

23 20. The object of the conspiracy was carried out, and to
24 be carried out, in substance, as follows:

25 Employment with Dr. Stephen Levine

26 a. Defendant FILIAN was employed as an independent
27 contractor for co-conspirator Levine to conduct physical exams
28

1 and face-to-face evaluations of Medicare beneficiaries at their
2 homes to assess the patient for home health services.

3 b. HHAs would provide co-conspirator Levine or
4 defendant FILIAN with beneficiary information for patients to be
5 assessed for home health services.

6 c. Co-conspirator Levine or defendant FILIAN would
7 visit patients to gather the patient histories, conduct physical
8 exams, and complete face-to-face evaluations, or would complete
9 the face-to-face evaluations without visiting the patient. If
10 defendant FILIAN completed the examination and face-to-face
11 evaluation, and other forms, he would sign the forms and would
12 falsely represent that the beneficiaries were homebound or
13 otherwise met the criteria for Medicare to pay for home health
14 care, when in fact, as defendant FILIAN then well knew, the
15 beneficiaries did not meet those criteria. Defendant FILIAN
16 would then bring those forms to co-conspirator Levine to sign.

17 d. In truth and in fact, as defendant FILIAN, co-
18 conspirator Levine, and other co-conspirators at the HHAs then
19 knew, many of these beneficiaries had never been seen or
20 evaluated by defendant FILIAN, co-conspirator Levine, or by any
21 qualified professional that worked for co-conspirator Levine to
22 assess their need for home health care, or did not meet the
23 criteria for Medicare to pay for the care.

24 e. After co-conspirator Levine signed the fraudulent
25 forms that defendant FILIAN presented to him, defendant FILIAN
26 would take the resulting orders for home health care to the
27 HHAs, and the HHAs' agents would complete 485s which the HHA
28 agents would give back to defendant FILIAN. Defendant FILIAN

1 would then bring the 485s back to co-conspirator Levine for his
2 signature. Defendant FILIAN would return the signed documents
3 to the HHAs.

4 f. Co-conspirator Levine would bill Medicare for the
5 patient visits for patients whose face-to-face evaluations had
6 been completed by defendant FILIAN. Co-conspirator Levine would
7 pay defendant FILIAN \$100 to \$150 via check to defendant FILIAN
8 or Quadratum for each patient visit.

9 Payments from HHAs

10 g. In exchange for referring Medicare beneficiaries
11 for home health services, defendant FILIAN would receive
12 kickback payments from co-conspirators at various HHAs, in the
13 form of checks made out directly to defendant FILIAN or to the
14 entities he controlled, namely, Quadratum, Karabell, or
15 Volkadon. Defendant FILIAN would give a portion of the kickback
16 payments in cash to co-conspirator Levine, who also received
17 payments directly from co-conspirators at various HHAs.
18 Defendant FILIAN would orchestrate the cash kickback payments
19 between some of the HHAs and co-conspirator Levine.

20 h. Between at least in or about August 2013 and
21 October 2017, defendant FILIAN would deposit kickback checks
22 into at least seven banking accounts in his name and in the name
23 of Quadratum, Karabell, or Volkadon. The HHAs that provided
24 approximately \$1 million of these kickback checks billed
25 Medicare for providing home health care with co-conspirator
26 Levine as the attending or referring physician.

27 Scope of the Conspiracy

28 i. Between August 2013 and December 2017,

1 approximately 164 HHAs billed Medicare for providing home health
2 care with co-conspirator Levine as the attending or referring
3 physician for approximately 5,350 distinct beneficiaries.

4 During that time period, Medicare paid approximately \$58 million
5 to these HHAs for claims on which co-conspirator Levine was the
6 attending or referring provider. Defendant FILIAN was
7 responsible for examining an estimated 60% of those
8 beneficiaries, amounting to approximately 3,200 beneficiaries
9 and approximately \$35 million paid by Medicare.

COUNTS TWO THROUGH FIVE

[18 U.S.C. §§ 1347, 2]

21. The Grand Jury hereby repeats, realleges, and incorporates by reference paragraphs 1 through 18 and 20 of this Indictment as though fully set forth herein.

A. THE SCHEME TO DEFRAUD

22. Beginning in or about August 2013, and continuing until at least in or about December 2017, in Los Angeles and Ventura Counties, within the Central District of California, and elsewhere, defendant FILIAN, together with co-schemer Levine and others known and unknown to the Grand Jury, knowingly, willfully, and with the intent to defraud, executed, attempted to execute, and willfully caused to be executed a scheme and artifice: (1) to defraud a health care benefit program, namely, Medicare, as to material matters in connection with the delivery of and payment for health care benefits, items, and services; and (2) to obtain money from Medicare by means of material false and fraudulent pretenses, representations, and promises, and the concealment of material facts in connection with the delivery of and payment for health care benefits, items, and services.

B. MEANS TO ACCOMPLISH THE SCHEME TO DEFRAUD

23. The fraudulent scheme operated, in substance, as described in paragraph 20 of this Indictment.

C. EXECUTIONS OF THE FRAUDULENT SCHEME

24. On or about the dates set forth below, within the Central District of California, and elsewhere, defendant FILIAN, together with others known and unknown to the Grand Jury, knowingly and willfully executed and attempted to execute the

fraudulent scheme described above by completing and signing face-to-face evaluations ("F2F EVAL") for the beneficiaries identified below, which contained false information, and which were then used by co-conspirators at the HHAs identified below to submit false and fraudulent claims to Medicare for home health care services:

COUNT	BENEFICIARY	DATE ON F2F EVAL	HHA THAT BILLED MEDICARE	AMT HHA BILLED TO MEDICARE
TWO	G.R.	6/28/2015	HHA-1	\$2,220
THREE	C.R.	6/24/2015	HHA-1	\$2,500
FOUR	M.H.	3/1/2016	HHA-2	\$1,780
FIVE	R.H.	3/2/2016	HHA-2	\$1,080

COUNT SIX

[18 U.S.C. § 371]

25. The Grand Jury hereby repeats, realleges, and incorporates by reference paragraphs 1 through 18 and 20 of this Indictment as though fully set forth herein.

A. OBJECT OF THE CONSPIRACY

26. Beginning in or around August 2013 and continuing through in or around December 2017, in Los Angeles and Ventura Counties, within the Central District of California, and elsewhere, defendant FILIAN, co-conspirator Levine, and others known and unknown to the Grand Jury, knowingly combined, conspired, and agreed to commit the following offenses against the United States:

a. Knowingly and willfully soliciting and receiving remuneration in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, in violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A); and

b. Knowingly and willfully offering to pay and paying any remuneration to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, in violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A).

B. MANNER AND MEANS OF THE CONSPIRACY

27. The objects of the conspiracy were carried out, and to

1 be carried out as described in paragraph 20 of this Indictment.

2 C. OVERT ACTS

3 28. On or about the following dates, in furtherance of the
4 conspiracy and to accomplish its objects, defendant FILIAN,
5 together with co-conspirator Levine and others known and unknown
6 to the Grand Jury, committed and willfully caused others to
7 commit the following overt acts, among others, within the
8 Central District of California and elsewhere:

9 Overt Act No. 1: On or about August 17, 2015, defendant
10 FILIAN endorsed and deposited a check for \$800 dated August 17,
11 2015, written from HHA-4 to defendant FILIAN, into FILIAN USB
12 x8448. This check was payment for certifying four patients to
13 HHA-4 for home health care.

14 Overt Act No. 2: On or about September 16, 2015,
15 defendant FILIAN signed and deposited a check for \$400 dated
16 September 15, 2016, written from HHA-4 to defendant FILIAN, into
17 FILIAN USB x8448. This check was payment for certifying two
18 patients to HHA-4 for home health care.

19 Overt Act No. 3: On or about March 7, 2016, defendant
20 FILIAN signed and deposited a check dated March 7, 2016, in the
21 amount of \$8,500, written from HHA-2 to defendant FILIAN, into
22 Quadratum USB x8244. This check was payment for the referral of
23 Medicare beneficiaries that defendant FILIAN caused Levine to
24 certify to receive home health care from HHA-2.

25 Overt Act No. 4: On or about May 19, 2016, defendant
26 FILIAN signed and deposited a check for \$200 dated May 19, 2016,
27 written from HHA-4 to defendant FILIAN, into FILIAN USB x8448.

1 This check was payment for certifying one patient to HHA-4 for
2 home health care.

3 Overt Act No. 5: On or about July 28, 2017, defendant
4 FILIAN deposited a check dated July 27, 2017, in the amount of
5 \$2,750, written from HHA-3 to Karabell, into Karabell JPM x3019.
6 This check was payment for the referral of Medicare
7 beneficiaries that defendant FILIAN caused Levine to certify to
8 receive home health care from HHA-3.

9 Overt Act No. 6: On or about August 8, 2017, defendant
10 FILIAN gave co-conspirator Levine approximately \$200 in cash as
11 payment for certifying one patient to HHA-3 for home health
12 care.

13 Overt Act No. 7: On or about August 23, 2017, defendant
14 FILIAN gave co-conspirator Levine approximately \$150 in cash as
15 payment for certifying one patient to HHA-3 for home health
16 care.

17 Overt Act No. 8: On or about September 28, 2017,
18 defendant FILIAN endorsed and deposited a check for \$3,300 dated
19 September 28, 2017, written from HHA-4 to Karabell into Karabell
20 JPM x3019. This check was payment for the referral of Medicare
21 beneficiaries that defendant FILIAN caused co-conspirator Levine
22 to certify to receive home health care from HHA-4.

23 Overt Act No. 9: On or about October 3, 2017, defendant
24 FILIAN gave Levine approximately \$1,800 in cash as payment for
25 certifying nine patients to HHA-4 for home health care.
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COUNTS SEVEN THROUGH NINE

[42 U.S.C. § 1320a-7b(b) (1) (A); 18 U.S.C. § 2(b)]

29. The Grand Jury hereby repeats, realleges, and incorporates by reference paragraphs 1 through 18, 20 and 28 of this Indictment as though fully set forth herein.

30. On or about the dates set forth below, in Los Angeles and Ventura Counties, within the Central District of California, and elsewhere, defendant FILIAN knowingly and willfully received and caused to be received remuneration, namely, checks in the amounts identified below, which constituted kickbacks to defendant FILIAN for referring patients to various HHAs, for which payment could be made in whole and in part under a Federal health care program, namely, Medicare:

COUNT	DATE	PAYOR	PAYEE	AMOUNT
SEVEN	3/7/2016	HHA-2	Quadratum	\$8,500 (Check No. 2472)
EIGHT	7/27/2017	HHA-3	Karabell	\$2,750 (Check No. 1266)
NINE	9/28/2017	HHA-4	Karabell	\$3,300 (Check No. 1463)

COUNTS TEN AND ELEVEN

[42 U.S.C. § 1320a-7b(b) (2) (A); 18 U.S.C. § 2(b)]

31. The Grand Jury hereby repeats, realleges, and incorporates by reference paragraphs 1 through 18, 20, and 28 of this Indictment as though fully set forth herein.

32. On or about the dates set forth below, in Los Angeles and Ventura Counties, within the Central District of California, and elsewhere, defendant FILIAN knowingly and willfully paid and provided to Levine, and caused to be paid and provided to Levine, remuneration, namely, cash in the amounts identified below, which constituted kickbacks to Levine for referring patients to various HHAs, for which payment could be made in whole and in part under a Federal health care program, namely, Medicare:

COUNT	DATE	PAYOR	PAYEE	AMOUNT
TEN	8/23/2017	FILIAN	Levine	\$150 (cash)
ELEVEN	10/3/2017	FILIAN	Levine	\$1,800 (cash)

COUNTS TWELVE THROUGH FOURTEEN

[18 U.S.C. §§ 1956(a)(1)(B)(i), 2]

33. The Grand Jury hereby repeats, realleges, and incorporates by reference paragraphs 1 through 20, 22 through 24, 26 through 28, 30, and 32 of this Indictment as though fully set forth herein.

34. On or about the following dates, in Los Angeles County, within the Central District of California, and elsewhere, defendant FILIAN, knowing that the property involved in each of the following financial transactions represented the proceeds of some form of unlawful activity, conducted, attempted to conduct, aided and abetted and willfully caused to be conducted the following financial transactions affecting interstate and foreign commerce, which transactions in fact involved the proceeds of specified unlawful activity, namely, health care fraud, in violation of Title 18, United States Code, Section 1347; conspiracy to commit health care fraud, in violation of Title 18, United States Code, Section 1349; and conspiracy to pay and receive illegal remunerations, in violation of Title 18, United States Code, Section 371, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of said specified unlawful activity:

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COUNT	DATE	FINANCIAL TRANSACTION
TWELVE	4/5/2014	The deposit of check number 1092, written from Volkadon WF x0910 to Quadratum and dated April 4, 2014, for \$60,000, into Quadratum BOA x2076.
THIRTEEN	6/17/2014	The deposit of check number 1091, written from Quadratum USB x8244 to Volkadon and dated June 9, 2014, for \$20,000, into Volkadon WF x0910.
FOURTEEN	9/28/2017	The deposit of check number 1463 from HHA-4 for \$3,300 made payable to Karabell and dated September 28, 2017, into Karabell JPM x3019.

FORFEITURE ALLEGATION ONE

[18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)]

1. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given that the United States of America will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), in the event of the defendant's conviction under Count One of this Indictment. The defendant, if so convicted, shall forfeit the following:

a. All right, title and interest in any and all property, real or personal, constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of any such offense;

b. any personal property used or intended to be used to commit the offense; and

c. To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraphs a and b.

3. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), and Title 28, United States Code, Section 2461(c), the defendant shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as the result of any act or omission of the defendant, the property described in the preceding paragraph, or any portion thereof: (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to or deposited with a

1 third party; (c) has been placed beyond the jurisdiction of the
2 court; (d) has been substantially diminished in value; or (e)
3 has been commingled with other property that cannot be divided
4 without difficulty.

FORFEITURE ALLEGATION TWO

[18 U.S.C. § 982(a)(7) and 28 U.S.C. § 2461(c)]

1. Pursuant to Rule 32.2(a), Fed. R. Crim. P., notice is hereby given that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Section 982(a)(7) and Title 28, United States Code, Section 2461(c), in the event of defendant's conviction under any of Counts Two through Eleven of this Indictment. The defendant, if so convicted, shall forfeit the following:

a. All right, title, and interest in any and all property, real or personal, that constitutes or is derived, directly or indirectly, from the gross proceeds traceable to the commission of any offense of conviction; and

b. To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph a.

2. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(b), the defendant shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as a result of any act or omission of the defendant, the property described in the preceding paragraph, or any portion thereof (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to or deposited with a third party; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in value; or (e)

1 has been commingled with other property that cannot be divided
2 without difficulty.

FORFEITURE ALLEGATION THREE

[18 U.S.C. § 982(a)(1) and 28 U.S.C. § 2461(c)]

1. Pursuant to Rule 32.2(a) of the Federal Rules of Criminal Procedure, notice is hereby given that the United States will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 982(a)(1), and Title 28, United States Code, Section 2461(c), in the event of the defendant's conviction under any of Counts Twelve through Fourteen of this Indictment. The defendant, if so convicted, shall forfeit the following:

(a) Any property, real or personal, involved in such offense, and any property traceable to such property; and

(b) To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph a.

2. Pursuant to Title 21, United States Code, Section 853(p) and Title 18, United States Code, Section 982(b)(2), the defendant shall forfeit substitute property, if, by any act or omission of the defendant, the property described in paragraph 1, or any portion thereof, cannot be located upon the exercise of due diligence; has been transferred, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has

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1 been commingled with other property that cannot be divided
2 without difficulty.

3 A TRUE BILL

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5 151
6 Foreperson

7
8 NICOLA T. HANNA
9 United States Attorney

10
11 
12 LAWRENCE S. MIDDLETON
13 Assistant United States Attorney
14 Chief, Criminal Division

15 RANEE A. KATZENSTEIN
16 Assistant United States Attorney
17 Chief, Major Frauds Section

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